April 11, 2025

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Re: Delete, Delete, Delete, GN Docket No. 25-133

Dear Chair Carr:

In the above-captioned proceeding, the Commission sought comment on whether "technological changes . . . render a rule unnecessary or inappropriate" and whether any rules "have outlived their usefulness" and whether certain rules are barriers to entry for smaller firms.[1]

The FCC has held on its books a rule that originated in the 1980s, based on the technology of that era. The relevant technology has not been in use since 2009—over 15 years ago. Today, the assigned frequencies that once were a hindrance and therefore merited preferential treatment now are a benefit. The rule permits some licensees to far exceed a limit explicitly set by Congress. Moreover, it reduces competition and limits new entrants.

Typically, such a rule would be quickly denounced by leaders who view this docket as a welcome turn of events. In this case, however, because the archaic rule produces benefits to the most powerful market participants, it is more likely the Commission will not only reaffirm its commitment to anachronistic and non-existent technological disparities but also will likely conclude that all broadcast licensees should benefit from overly lenient treatment even if they do not possess the technology in question.

Despite the unlikeliness of FCC action, the initiation of this docket compels UCC Media Justice to urge the FCC to eliminate the UHF Discount. The FCC adopted the discount when it adopted the national TV audience reach cap.[2] As explained above, the UHF Discount was adopted in 1985[3] to assist stations located in the UHF band because those stations had a lesser reach than VHF stations.[4] As the FCC explained when it repealed the discount in 2016 (almost 10 years ago), originally "UHF stations, produc[ed] weaker over-

[1] Public Notice, GN Docket No. 25-133 at 3.
[2] Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Report and Order, 31 FCC Rcd 10213, ¶ 4 (2016) (*UHF Discount Repeal Order*).
[3] In the Matter of Amendment of Section 73.3555 [formerly Sections 73.35, 73.240 and 73.636] of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum, Opinion, and Order, 100 F.C.C.2d 74, ¶¶ 1-44 (1985).
[4] Rothenberger, Cecilia, *The UHF Discount: Shortchanging The Public Interest,* American University Law Review 53, no.2, 689-729 (December 2003).

the-air signals, reach[] smaller audiences, and cost[] more to build and operate than VHF stations."[5] However, that was no longer the case after the Digital Television (DTV) transition.[6] The repeal was logical, [7] but unfortunately, the repeal of the UHF discount was reversed by the FCC in 2017.[8]

Not only is the UHF Discount anachronistic and technically incorrect, it thwarts Congressional will. Congress has been clear that the national TV audience limit is in the national interest. The Telecommunications Act of 1996 directed the Commission to increase the cap from 25 percent to 35 percent,[9] but nonetheless retained a cap. When the FCC attempted to increase the national cap to 45 percent of total U.S. households in 2018, prompting a firestorm of bi-partisan protest, Congress acted again to set the limit at a slightly higher 39 percent.[10]

While it benefits from the obsolete UHF Discount, the National Association of Broadcasters (NAB) and its members, such as Nexstar, have announced they seek further relaxation of the FCC's national ownership caps.[11] *Under the UHF Discount, Nexstar reaches 70 percent of national television households even though the national audience reach cap set by Congress is 39 percent.*[12] These efforts for more consolidation will only decrease the variety of viewpoints and the number of newsgatherers at a time when both are critical to our nation and our democracy. Broadcasters' quiescent approach to the unacceptable assault on press freedom currently underway demonstrates they are placing greed and consolidation over journalism and the public interest.

An update is needed, but not the one broadcasters seek. UCC Media Justice urges repeal of the UHF Discount.[13]

Sincerely,

Cheryl A. Leanza
Policy Advisor
United Church of Christ Media Justice Ministry

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[5] *UHF Discount Repeal Order* at ¶2.
[6] Rothenberger, *supra*.
[7] Benton Foundation, *Beware: The UHF Discount Is Rising From The Dead* (April 18, 2017), https://www.benton.org/blog/beware-uhf-discount-rising-dead.
[8] Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration, 32 FCC Rcd 3390 (2017).
[9] Telecommunications Act of 1996, Pub. L. No. 104-04, § 202(c)(1), 110 Stat. 56, 111 (1996).
[10] Pub. L. 108-199 (2018), §629; 47 C.F.R. §73.35555(e); Frank Ahrens, *Compromise Puts TV Ownership Cap at 39%,* Washington Post (Nov. 25, 2003).
[11] Letter from Rick Kaplan, Nat'l Ass'n Broad. to Marlene Dortch, FCC, MB Docket No. 17-318 (filed April 2, 2025).
[12] *TVN's Top 30 Station Groups: A Volatile Year Delivered Few Changes*, TV NewsCheck (Aug. 28, 2024), https://tvnewscheck.com/business/article/tvns-top-30-station-groups-a-volatile-year-delivered-few-changes/.
[13] The current docket is insufficiently noticed pursuant to the Administrative Procedure Act to take any action. Any action proposed would require a fully APA compliant proceeding.